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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/809,346

03/26/2004

Yoshinobu Yamazaki

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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER

HENLEY III, RAYMOND J

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

01/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/809,346

Applicant(s)

YAMAZAKI ET AL.

Examiner

Raymond J. Henley III

Art Unit

1614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-19.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

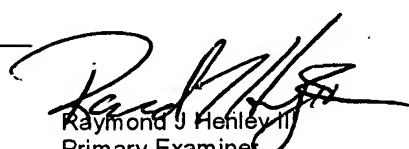
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.


Raymond J. Henley III
Primary Examiner
Art Unit: 1614

Continuation of 11. does NOT place the application in condition for allowance because of reasons of record and those which follow.

The Examiner will agree that "urgency" is different than "urinary incontinence" and "frequency" as stressed by Applicants at page 10 of their remarks, third full paragraph, "Thus, the definition means that... 'urgency' is different than 'urinary incontinence' and 'frequency' and is seem [sic] independently of whether or not urinary incontinence and/or pollakiuria coexist or not". This, however, does not diminish the propriety of the present rejection because the rejection does not rest or otherwise depend on whether "urgency" means the same as "urinary incontinence" or "frequency".


The invention as is now claimed is a "method for treating urinary incontinence associated with overactive bladder" which involves the administration of certain, claimed defined compounds.

It remains that Tanaka et al. expressly teach a method for the treatment of urinary incontinence with the presently claimed compounds.

The difference, then, between the reference's teaching and the claimed subject matter is that urinary incontinence "associated with overactive bladder" is not disclosed by Tanaka et al..

However, Tanaka et al. does not limit the treatment to any particular type of urinary incontinence. Thus, thus one of ordinary skill in the art would have recognized that the teachings of Tanaka et al. apply to the treatment of urinary incontinence having a cause known in the art, including the urinary incontinence which was known to be associated with overactive bladder. Such an association was referenced not only in the art relied upon by the Examiner, (see Short et al. or Guittard et al.), but also newly acknowledged by Applicants in their statement, "In detail, before filing the present application, OAB was clearly defined as a syndrome of urgency, WITH or without INCONTINENCE, usually with frequency and nocturia", (emphasis added; remarks at page 9, first paragraph).

The rejection of claims 1-19 is thus deemed to remain proper.


RAYMOND HENLEY III
PRIMARY EXAMINER

AU 16/14